



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-95-13/1-A
Date: 25 November 2008
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andréia Vaz

Registrar: Mr. Hans Holthuis

Decision of: 25 November 2008

PROSECUTOR
v.
MILE MRKŠIĆ
VESELIN ŠLJIVANČANIN
PUBLIC

**DECISION ON ŠLJIVANČANIN AND MRKŠIĆ MOTIONS SEEKING
ADDITIONAL TIME FOR THE PRESENTATION OF SUPPLEMENTARY
SUBMISSIONS DURING THE APPEALS HEARING OR AN
ALTERNATIVE REMEDY**

AND

SCHEDULING ORDER FOR APPEALS HEARING

The Office of the Prosecutor:

Ms. Helen Brady

Counsel for Mile Mrkšić:

Mr. Miroslav Vasić
Mr. Vladimir Domazet

Counsel for Veselin Šljivančanin:

Mr. Novak Lukić
Mr. Stéphane Bourgon

THE APPEALS CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Appeals Chamber” and “International Tribunal”, respectively);

BEING SEIZED of the appeals lodged by the Office of the Prosecutor (“Prosecution”), Mile Mrkšić (“Mrkšić”) and Veselin Šljivančanin (“Šljivančanin”) against the Judgement rendered in this case by Trial Chamber II on 27 September 2007;¹

BEING FURTHER SEIZED of the “Motion on Behalf of Veselin Šljivančanin Seeking Additional Time for the Presentation of Supplementary Submissions During the Appeals Hearing or an Alternative Remedy”, filed on 20 October 2008 (“Šljivančanin Motion”);

BEING FURTHER SEIZED of the “Mr. Mile Mrkšić’ Motion on Behalf [*sic*] Seeking Additional Time For the Presentation of Supplementary Submissions During the Appeals Hearing or an Alternative Remedy”, filed on 20 October 2008 (“Mrkšić Motion”);

NOTING the “Prosecution’s Joint Response to Veselin Šljivančanin and Mile Mrkšić’s Motions Seeking Additional Time for the Presentation of Supplementary Submissions During the Appeals Hearing or an Alternative Remedy”, filed on 29 October 2008 (“Response”);

NOTING the “Reply on Behalf of Veselin Šljivančanin to Prosecution’s Joint Response to Veselin Šljivančanin and Mile Mrkšić’s Motions Seeking Additional Time for the Presentation

¹ *Prosecutor v. Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin*, Case No. IT-95-13/1-T, Judgement, 27 September 2007; **Prosecution Appeal**: Prosecution’s Notice of Appeal, 29 October 2007; Prosecution’s Amended Notice of Appeal, 7 May 2008; Prosecution’s Appeal Brief, 14 January 2008 (Confidential), a public redacted and corrected version having been filed on 8 February 2008 (“Prosecution Appeal Brief”); Mile Mrkšić’s Response Brief to Prosecution’s Appeal Brief, 18 June 2008 (“Mrkšić Response Brief”); Response Brief on behalf of Veselin Šljivančanin, 18 June 2008 (Confidential), a public redacted version having been filed on 15 September 2008 (“Šljivančanin Response Brief”); Prosecution’s Consolidated Reply to Mile Mrkšić and Veselin Šljivančanin’s Response Briefs, 3 July 2008 (Confidential), a public redacted version having been filed on 9 July 2008; **Mrkšić Appeal**: Mr. Mile Mrkšić’s Defence Notice of Appeal and Request for Leave to Exceed the Word Limit, 29 October 2007; Mile Mrkšić’s Appeal Brief (corrected), 22 July 2008 (Confidential), a public redacted version having been filed on 15 September 2008; Prosecution’s Consolidated Response Brief to Mile Mrkšić and Veselin Šljivančanin’s Appeal Briefs, 28 August 2008 (Confidential), a public redacted version having been filed on 15 September; Mile Mrkšić’s Reply Brief to Prosecution’s Response Brief, 15 September 2008 (Confidential), a public redacted version having been filed on 6 October 2008; **Šljivančanin Appeal**: Notice of Appeal from the Judgement of 27 September 2007 by the Defence of Veselin Šljivančanin, 29 October 2007; Amended Notice of Appeal on behalf of Veselin Šljivančanin, 28 August 2008; Appellant’s Brief on behalf of Veselin Šljivančanin, 8 July 2008 (Confidential); Amended Appellant’s Brief on behalf of Veselin Šljivančanin, 28 August 2008 (Confidential), a public redacted version having been filed on 28 August 2008; Prosecution’s Supplemental Response Brief to Šljivančanin’s Amended Appeal Brief, 10 September 2008 (Confidential), a public redacted version having been filed on 15 September 2008; Reply Brief on behalf of Veselin Šljivančanin, 12 September 2008 (Confidential), a public redacted version having been filed on 20 October 2008; Additional Reply on behalf of Veselin Šljivančanin, 18 September 2008 (Confidential), a public redacted version having been filed on 6 October 2008.

of Supplementary Submissions During the Appeals Hearing or an Alternative Remedy”, filed on 3 November 2008 (“Reply”);

CONSIDERING the Šljivančanin Motion, in which Šljivančanin requests leave to present additional submissions in the form of forty-five additional minutes for the presentation of his oral arguments at the appeals hearing or a supplemental response of not more than 6,000 words, in order to address the impact of the Appeal Judgement in *Prosecutor v. Milan Martić*² on Ground 1 of the Prosecution Appeal;³

CONSIDERING the Mrkšić Motion, in which Mrkšić supports the Šljivančanin Motion and seeks the same relief;⁴

CONSIDERING the Response, in which the Prosecution opposes the Šljivančanin Motion and the Mrkšić Motion (collectively, “Motions”) on the grounds that, first, the request for additional time during the appeals hearing is premature because the Appeals Chamber has yet to issue a scheduling order,⁵ and second, that good cause has not been shown for supplemental written submissions because the *Martić* Appeal Judgement has in fact reduced the scope of the Prosecution Appeal;⁶

CONSIDERING the Reply, in which Šljivančanin argues that it is in the interests of justice to allow him to address the merits and impact of the *Martić* Appeal Judgment because it has altered the jurisprudence of the International Tribunal and will assist the Appeals Chamber in adjudicating Ground 1 of the Prosecution Appeal;⁷

NOTING that the briefing on the appeals in this case was completed prior to the rendering of the *Martić* Appeal Judgement;

NOTING that in the *Martić* Appeal Judgement, the Appeals Chamber held that a person *hors de combat* may be the victim of a crime against humanity, provided that all other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against any civilian population;⁸

² *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Judgement, 8 October 2008 (“*Martić* Appeal Judgement”).

³ Šljivančanin Motion, paras 1-2, 10, 12.

⁴ Mrkšić Motion, paras 2-3.

⁵ Response, para. 6.

⁶ Response, paras 7, 12.

⁷ Reply, paras 3, 11-12.

⁸ *Martić* Appeal Judgement, paras 303-314.

CONSIDERING that Mrkšić and Šljivančanin have responded to Ground 1, sub-ground 1 of the Prosecution Appeal in their response briefs, namely, the contention that Article 5 of the Statute of the International Tribunal does not require individual victims to be civilians;⁹

CONSIDERING that at the status conference of 16 October 2008, the Prosecution indicated that, in light of the *Martić* Appeal Judgement, it would not be pursuing Ground 1, sub-ground 2 of the Prosecution Appeal, namely, the contention that all non-participants in the hostilities should be regarded as civilians;¹⁰

CONSIDERING that Ground 2 of the Prosecution Appeal relates solely to the liability of Šljivančanin, namely, Šljivančanin's responsibility for aiding and abetting murder;¹¹

CONSIDERING that where a party alleges that the subsequent jurisprudence of the International Tribunal impacts upon the position that the party took in its previous submissions, leave to supplement submissions may be granted;¹²

FINDING, however, that it is in the interests of justice to inform the parties of the total amount of time allocated for oral arguments for each of the appeals, and permit the parties to use their time as they wish, rather than allocating a specific amount of time for a particular aspect of the appeals:

PURSUANT to Rule 114 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), which provides that "[a]fter the expiry of the time-limits for filing the briefs provided for in Rules 111, 112 and 113, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the parties";

HEREBY ORDERS that the appeal hearing in the present case shall take place on Wednesday, 21 January and Friday, 23 January 2009, in Courtroom I, and **INFORMS** the parties that the timetable for the hearing shall be as follows:

Wednesday, 21 January 2009:

09:00 – 09:15 Introductory Statement by the Presiding Judge (15 minutes)

Mrkšić Appeal:

⁹ Mrkšić Response Brief, paras 6-55; Šljivančanin Response Brief, paras 19-126.

¹⁰ T. 25, 16 October 2008; Response, para. 7.

¹¹ Prosecution Appeal Brief, paras 74-152.

09:15 – 10:45 Submissions of the Appellant (one hour and 30 minutes)

10:45 – 11:00 *Pause (15 minutes)*

11:00 – 12:30 Response of the Prosecution (one hour and 30 minutes)

12:30 – 14:00 *Pause (one hour and 30 minutes)*

14:00 – 14:30 Reply of the Appellant (30 minutes)

Šljivančanin Appeal:

14:30 – 16:00 Submissions of the Appellant (one hour and 30 minutes)

16:00 – 16:15 *Pause (15 minutes)*

16:15 – 17:45 Response of the Prosecution (one hour and 30 minutes)

Friday, 23 January 2009:

09:00 – 09:30 Reply of the Appellant (30 minutes)

Prosecution Appeal:

09:30 – 10:30 Submissions of the Prosecution (one hour)

10:30 – 10:45 *Pause (15 minutes)*

10:45 – 12:15 Response of Mr. Mrkšić (one hour and 30 minutes)

12:15 – 13:00 Response of Mr. Šljivančanin (45 minutes)

13:00 – 14:30 *Pause (one hour and 30 minutes)*

14:30 – 15:30 Continued Response of Mr. Šljivančanin (one hour)

15:30 – 16:15 Reply of the Prosecution (45 minutes)

Personal Statement of Mr. Mrkšić (10 minutes – optional)

Personal Statement of Mr. Šljivančanin (10 minutes – optional)

¹² *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Decision on Vinko Martinović's Motion to Supplement his Appeal Brief, 18 February 2005, p. 3; cf. *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Order Regarding Briefings on Appeal, 23 August 2007, p. 2.

INFORMS the parties that, though they remain free to use their allotted argument time as they deem appropriate, they are expected not to reiterate their written submissions and that they will be invited in due course to address specific questions during the hearing;

CONSIDERING that the request for additional time during the appeals hearing presented in the Motions has been taken into account in this Scheduling Order;

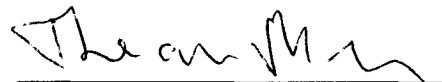
FINDS that because Mrkšić and Šljivančanin will have the opportunity to address the impact of the *Martić* Appeal Judgement during the appeals hearing, it is not in the interests of justice to allow the filing of additional written submissions;

GRANTS the Motions; and

REQUESTS the Registrar to make all necessary arrangements for the appeals hearing as scheduled.

Done in English and French, the English text being authoritative.

Dated this 25th day of November 2008
At The Hague
The Netherlands



Judge Theodor Meron
Presiding

[Seal of the International Tribunal]